WP(C) 3924/2007

BEFORE

HON'BLE SMT JUSTICE A.HAZARIKA

The petitioner is before this Court praying for an appropriate writ or direction, directing the respondents to provide him appointment in any Grade-III or Grade-IV post under the respondent authority as per the Assam Public Services (Appointment of Family Members of Person Killed By Extremists and Terrorists) Rules, 1992 (hereinafter referred to as Rules 1992) and/or adequate relief to the petitioner in the light of Govt. notification issued under No.ABP.121/92/Pt-V/136 dated 22.6.04.

I have heard Mr. M.K. Sarma, learned counsel appearing on behalf of the petitioner. Also heard Mr. BC Saikia, learned Additional Senior Govt. Advocate, Assam appearing for State respondents.

Taking into consideration the grievances raised by the petitioner in the writ petition and as agreed to by the learned counsel for the parties, this writ petition is disposed of at the motion stage itself.

The case of the petitioner, in brief, is that, the father of the petitioner, late Biren Rabha, who was the only earning member of the family, was killed by Bodo extremists on 23.8.93. The petitioner belongs to scheduled tribe community and comes from a very poor family, living hand to mouth. The petitioner, therefore, approached the respondent authority with a prayer for granting Ex-gratia payment and to provide appointment in any job under Govt. or Semi Govt. department as per provisions laid down in the Rules 1992. Upon receipt of the application so submitted by the petitioner, the Deputy Commissioner, Darrang sought for a report from the Circle Officer of Kalaigaon Revenue Circle. The concerned Circle Officer had duly submitted detailed report to the Deputy Commissioner vide letter dated 8.1.99 which is quoted hereunder:

Government of Assam
Office of the S.D.C., Kalaigaon Revenue Circle
Kalaigaon
No.KLG-1/Estt/98/16 Date:08.01.1999

To,
The Deputy Commissioner,
Darrang, Mangaldoi.

Sub: regarding application of Ranjit Rabha.

Sir,

Reference to the subject as cited above, I respectfully would like to state that on the application of Ranjit Rabha received from you a local investigation was made and it is seen from the post-mortem report that on 23-08-1993, the father of the applicant was killed by some unknown extremist. No earning member is there in the family of the deceased Biren Rabha. Further, as on day the family has not received any compensation for the victim. Sri Ranjit Rabha the eldest son of the deceased has attained appropriate age. If he is appointed in any service, the family shall accomplish conveniently. For your kind consideration and necessary action it is forwarded to you along with the report of the Lat Mandal.

Enclosure-As stated

Yours Faithfully,
Sd-Illegible
S.D.C.,
Kalaigaon Revenue Circle.

Inspite of the communication quoted herein above, the petitioner has till date not been appointed in any post, though after repeated persuasion, the family of the petitioner was granted an amount of Rs.1 lakh as Ex-gratia payment in the year 2000.

The petitioner had been pursuing the matter by submitting representation

s and also visiting the authorities from time to time i.e., on 15.2.2000, 26.02.2002, 18.4.2004 and 26.6.2006 and all the time concerned respondents assured him that his case shall be considered as and when Govt. approval would be received. But nothing happened till date. Hence this writ petition with the aforesaid prayer.

The petitioner claims to be qualified for appointment in any Grade-III or Grade-IV post as provided by Rules 1992. It is submitted that in the meantime, Government of Assam by notification No.ABP.121/Pt-V/136 dated 22.6.04 has repealed the Rules 1992 by providing following measures in place of said Rules 1992 to give relief to the affected families:

(i) Preference to members of the affected families certified as such by competent district authority in recruitment to Govt. or Semi Govt. jobs.

(ii) Preference to such certified persons in selection of beneficiaries under Self- employment Generation Scheme of different department and Welfare and Relief Schemes of Social Welfare etc. departments.

(iii) Enhancement of the Ex-gratia amount paid to the next of kin of a person killed in extremist violence to Rs.3 lakhs.

(iv) Alternative means of livelihood to families of earning victims of extremist violence to be determined by the district authorities after assessing the economic condition of each family separately.

(v) Free education to children of the poor affected families till they become eligible to earn.

By a subsequent Govt.Notification dated 14.12.04 , it was made clear that, quantum of ex-gratia grant of Rs.1 lakh to Rs.3 lakhs shall be given effect to as on or after 22.6.04.

It is submitted on behalf of the petitioner that inspite of the Govt. Scheme provided under Rules 1992 as well as the beneficial measures as provided vide notification dated 22.6.04, the same have not been extended to the petitioner till date. Hence, this writ petition with the aforesaid prayer.

Mr.Sharma, learned counsel for the petitioner has submitted that vide Government notification dated 22.6.04, the ex-gratia grant is enhanced to Rs.3 lakhs and as such , the family of the petitioner is now entitled to get an amount of Rs.3 lakhs.

I have perused the notification dated 22.6.04. A plain reading of the same reveals that the Rules 1992 stood repealed from that date and provisions thereof were substituted by those contained in the said notification but effecting a hike in the amount of ex-gratia grant being confined to cases of death as on or after 22.6.2004 as per subsequent notification dated 14.12.04, the benefit thereof could not be accorded to the petitioner.

It is further submitted that in view of the above notification dated 22.6.04, the petitioner was legitimately expecting that he shall be absorbed in any Govt. or Semi Govt. department by providing means of livelihood considering the hardships faced by the family of the petitioner for the killing of his father by the extremists which has been clearly mentioned in the communication dated 8.1.99. But inspite of the aforementioned communication the representations submitted by the petitioner before the appropriate authority are pending for consideration for years together, thereby depriving the petitioner from his legitimate claim and compelling him to approach this Court by filling the instant writ petition.

In my view, when such a request was pending on the date when the old Rules were repealed, having regard to the statutory objective thereof, such request can not be rendered nonest in law by the repealing notification. On the other hand, the direction contained in the notification dated 22.6.04 to return the pending applications to the respective Deputy Commissioners, in my opinion, reveals the intention of the authorities concerned to have the same processed afresh in terms of the parameters contained therein.

In that view of the matter, this petition stands closed with a direction to the Commissioner and Secretary to the Government of Assam, Department of Home(A), Dispur, Guwahati-6, Respondent No.1 and the Deputy Commissioner, Darrang,

Mangaldoi. Respondent No.4 to take steps to revive the process pertaining to the petitioner’s request for appointment and to complete the same expeditiously in terms of the notification dated 22.6.04.

The petitioner shall submit a certified copy of this order alongwith a copy of the writ petition before the Respondent Nos.1and 4 for doing the needful.

No cost.